

# Order

Entered: October 8, 2003

**Michigan Supreme Court  
Lansing, Michigan**

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ADM File No. 2003-30

Proposed Amendment of  
Rules 2.112, 2.118, and 2.401  
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering a proposal from the Representative Assembly of the State Bar of Michigan to amend Rules 2.112, 2.118, and 2.401 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all regarding this matter, including the issue of whether the adoption of the proposed amendments would conflict with this Court's decisions in *McDougall v Schanz*, 461 Mich 15 (1999), and *Greathouse v Rhodes*, 465 Mich 885 (2001). This matter will be considered at a future public hearing. The notice and agendas for such hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated below by underlining  
and deletions are indicated by strikeover.]

Rule 2.112 Pleading Special Matters

(A) - (K) [Unchanged.]

(L) Medical Malpractice Actions.

(1) [Current text of subrule (L).]

- (2) In a medical malpractice action, unless the court allows a later challenge for good cause:
  - (a) all challenges to a notice of intent to sue must be made at the time the defendant files its first response to the complaint, whether by answer or motion, and
  - (b) all challenges to an affidavit of merit or affidavit of meritorious defense, including the qualifications of the signer, must be made within 63 days of the filing of the affidavit.

#### Rule 2.118 Amended and Supplemental Pleadings

(A)-(C) [Unchanged.]

(D) Relation Back of Amendments. An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading. In a medical malpractice action, amendment of an affidavit of merit or affidavit of meritorious defense relates back to the date of original filing of the affidavit.

(E) [Unchanged.]

#### Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

(A) [Unchanged.]

(B) Early Scheduling Conference and Order.

(1) [Unchanged.]

(2) Scheduling Order.

- (a) At an early scheduling conference under subrule (B)(1), a pretrial conference under subrule (C), or at such other time as the court concludes that such an order would facilitate the progress of the case, the court shall establish times for events the court deems appropriate, including

(i) - (iii) [Unchanged.]

(iv) the exchange of witness lists under subrule (I), and

(v) the scheduling of a pretrial conference, a settlement conference, or trial,

(vi) the filing of summary disposition motions, and

(vii) a date for challenging the qualifications of an expert witness.

(b)-(c) [Unchanged.]

(C)-(I) [Unchanged.]

Staff Comment: The proposed amendment of MCR 2.112, 2.118, and 2.401, as recommended by the Representative Assembly of the State Bar, would require prompt challenges of notices of intent to sue and affidavits of merit and meritorious defense in medical malpractice cases, and prompt challenges of expert-witness qualifications in all cases. The Bar contends that the current law is unfair because it allows such challenges to be filed at any time, and also hopes to encourage the filing of dispositive motions before trial.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2004, at P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-30. Your comments and the comments of others will be posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 8, 2003

Corbin R. Davis